IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

Bail Appl..No. 6533 of 2007()

CRIME NO. 72/07 OF NOORANAD EXCISE RANGE

PETITIONER/ACCUSED

REMANY, W/O.VIKRAMAN,
THODUKAKIZHAKKETHIL VEEDU,
PALLIKKAL MURI, PALAMEL VILLAGE.

BY ADV. SRI.RASHEED C.NOORANAD

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6533 of 2007

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Dated this the 5th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. She, a woman,was allegedly found to engage herself in the activity of sale of IMFL. Though the section of offence shown is S.55(a), the learned Prosecutor submits that the offence falls only under Section 55(i) of the Act. The alleged incident took place on 11.10.2007. The petitioner was not arrested as no woman official was there in the Excise Party, which detected the crime. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner has no criminal antecedents at all. Because of ill-will against the husband of the petitioner, false allegations are now being raised against the petitioner with the intention of vexing and

harassing her and her husband. A lenient view may be taken and anticipatory bail may be granted to the petitioner.

3. The learned Prosecutor opposes the application. He submits that there are no circumstances justifying the invocation of the extra ordinary equitable discretion under Section 438 cr.P.C. There was absolutely no intention to vex and harass the petitioner or her husband. Vague and fanciful allegations are raised after the registration of the crime. The contemporaneous seizure mahazar as well as the occurrence report clearly show the involvement of the petitioner. Even the fact that the petitioner was not arrested indicate want of malafides on the part of the detecting officials. The petitioner may be directed to appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail, submits the learned Prosecutor.

4. I have considered all the relevant inputs. There are no features in this case, which would justify the invocation of the extra ordinary equitable discretion under section 438 Cr.P.C. in

favour of the petitioner. Though vague allegations are raised about the animosity for the non-specified detecting officials against the husband of the petitioner, there is nothing tangible to sail to the conclusion that the allegations could have been prompted by any such animosity. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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